

<b>Department of Social Services</b> <b>Division of Licensing Programs</b>  <b>STANDARD</b> <b>OPERATING</b> <b>PROCEDURE</b>	<b>TITLE:</b>  <b>ALLOWABLE VARIANCES</b>	<b>PROCEDURE NUMBER SOP-205</b>
		<b>EFFECTIVE DATE: May 20, 2005</b>
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## **205-1.0 PURPOSE**

To establish a standardized system for handling allowable variances for facilities and programs regulated by the Division of Licensing Programs (DOLP), to include considering requests, approvals and denials, tracking, monitoring, and reviewing.

## **205-2.0 SCOPE**

This standard operating procedure applies to all licensing administrators and representatives, as well as central office staff assigned to work on the allowable variances process.

## **205-3.0 DEFINITIONS**

Allowable variance: When DOLP grants permission to meet the intent of a standard by some means other than as specified by the standard and/or the suspension of enforcement of a particular standard or portion of the standard for a stated period of time.

DOLPHIN (Division Of Licensing Programs Help and Information Network): The Division's data system that manages information about applicants and licensed providers and serves as a tool for the work of licensing staff.

Licensing representative: This usually refers to the staff delegated to provide ongoing regulatory oversight for a facility by the appropriate licensing office or unit. With proper designation by the licensing administrator or division management, however, staffs conducting such regulatory activities may be: staffs who perform similar functions for other facilities or licensing offices; a member of the division's central staff; or, a non-VDSS employee approved by the commissioner or division director.

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## **205-4.0 PROCEDURES**

The Division's central office, with the assistance of licensing offices, will consider, approve or deny, and track requests for allowable variances. Licensing offices will monitor and review allowable variances once they have been approved.

### **205-4.1 Initiating a Request for an Allowable Variance:**

1. Whenever an applicant or licensee expresses an interest or need for an allowable variance, the licensing representative shall give a copy of the *Allowable Variance Request Form* (see Appendix A) to the applicant/licensee and provide consultation about the request and information about the process.

NOTE: The licensing representative shall first emphasize the importance of coming into compliance with the standard if at all possible and shall assist the applicant/licensee in finding potential solutions, eliminating the need for an allowable variance request.

2. The applicant/licensee shall fill in completely section 1 of the form and send it with supporting materials to the licensing representative for processing.

NOTE: Unlicensed facilities/programs must also submit an application for licensure, with the appropriate licensing fees.

3. The licensing representative and the licensing administrator shall discuss a recommendation about the allowable variance request then send the following to the operations program support technician in the central office within 30 days of receipt of the request from the applicant/licensee:

- a. The *Allowable Variance Request Form* (by inter-office mail) with section 2 completed by the licensing representative and administrator

NOTE: If the licensing representative and administrator disagree about a recommendation for an allowable variance, support for both positions should be clearly indicated on the *Allowable Variance Request Form*, with an additional page attached if necessary. The division director will make the final determination about the allowable variance request.

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- b. Supporting documents from applicant/licensee (by inter-office mail)
- c. A draft (by email) of an approval (see Appendix B) or a denial letter (see Appendix C) in reply to the request, including any explanations and stipulations for the applicant/licensee. Letters shall include:

- A statement of the standard(s), with corresponding numeration, and rationale(s)
- A statement of the circumstances surrounding the request and rationale for why the allowable variance is granted or denied
- Effective dates, including the end date or circumstances that will terminate the variance if it is granted for only a short period

NOTE: In some instances when an allowable variance is requested for a very short period of time, it may be better for the licensing representative to address the matter with the applicant/licensee through a corrective action plan and/or problem solving conference.

- Any stipulations attached to the variance if granted
  - A statement that the allowable variance may be reconsidered if circumstances change for the facility/program
  - Names of individuals who shall receive copies of the letter
4. The licensing representative shall enter the information about the request into the allowable variance screen in DOLPHIN.

#### 205-4.2 Approving/Denying an Allowable Variance Request:

1. The operations program support technician shall take the following steps upon receiving an *Allowable Variance Request Form*, supporting documents, and approval/denial draft letter from a licensing office:

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- a. Record information from the *Allowable Variance Request Form* in the Allowable Variances Database
  - b. Edit and format approval/denial draft letter
  - c. Give form, letter, and supporting materials to the assistant division director
2. The assistant division director shall consider the request (consulting with the operations manager, program consultants, and licensing administrators as necessary) and forward it with comments to the division director.
3. The division director shall approve or deny the request and make any necessary changes to the approval/denial letter within 30 days from the date the *Allowable Variance Request Form* was received in the central office.
  - a. The decision shall be indicated in section 3 of the *Allowable Variance Request Form*
  - b. The division director shall discuss substantial changes with the licensing administrator prior to signing the letter.

NOTE: The licensing representative shall request additional information or research from the applicant/licensee if needed by the division director to evaluate the allowable variance request.

4. The operations program support technician shall immediately distribute the letter to the licensing office and the applicant/licensee.
5. The licensing representative shall document in DOLPHIN when the allowable variance has been approved and shall include all relevant details.

NOTE: If the allowable variance is denied and challenged by the licensee, the licensing representative shall wait until receiving the final decision about the request before entering the information into DOLPHIN (see 205-4.2.7.c)

6. The operations program support technician shall maintain a record of the:
  - a. *Allowable Variance Request Form*

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- b. Supporting materials
  - c. Approval/denial letter
  - d. Any additional correspondence with the applicant/licensee
- 7. The applicant/licensee may challenge an initial denial:
  - a. The applicant/licensee shall submit to the central office in writing any new or additional information about the allowable variance request.
  - b. The division director shall consider this new information and notify the applicant/licensee and the licensing office of the final decision within 30 days.
  - c. The licensing representative shall enter the information about the final decision in the adverse enforcement screen of DOLPHIN.
- 8. An applicant/licensee may withdraw a request for an allowable variance at any time:
  - a. The applicant/licensee shall notify DOLP orally or in writing.
  - b. The licensing representative shall notify the central office immediately upon hearing from the applicant/licensee and shall enter into DOLPHIN that the allowable variance request has been cancelled.
  - c. The division director shall acknowledge in writing the applicant/licensee's wish to withdraw the request (see Appendix D).
  - d. The operations program support technician shall maintain a record of the acknowledgement letter in the applicant/licensee's record.

205-4.3 Monitoring:

- 1. The licensing representative shall review a facility's allowable variance according to the time frame established in the approval letter, or at least annually, to determine if it is still appropriate.

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2. The licensing representative shall conduct the review in accordance with the type and conditions of the allowable variance through any or all of the following:
  - a. On-site visit to the facility
  - b. Phone contacts with applicant/licensee and collateral sources
  - c. Review of documentation that would identify changed circumstances
3. The licensing representative shall document the results of the review in the text box of the Allowable Variance screen in DOLPHIN.
4. The licensing representative and the licensing administrator shall notify the division director in writing of any changes that may require an adjustment to the stipulations or a rescission of the allowable variance.
5. The division director shall modify or rescind an allowable variance when any of these conditions apply:
  - a. Additional information becomes known or conditions have changed which alter significantly the basis for the original decision
  - b. The applicant/licensee fails to meet any stipulations attached to the allowable variance
  - c. Results of the allowable variance jeopardize the safety, comfort, or well-being of persons in care

205-4.4

Tracking:

1. The operations program support technician shall maintain a record of the following for allowable variances:
  - a. Requests
  - b. Approvals/Denials
  - c. Rescinding of approvals

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2. The operations program support technician shall submit on a quarterly basis to the assistant division director a statistical report about allowable variances.
3. The division director shall review the reports on allowable variances annually to determine trends and recommendations for change as needed.

**205-5.0      AUTHORITY**

*Code of Virginia, § 63.2-1703; 22 VAC 40-80-230 (& 240)*

**205-6.0      RESPONSIBILITY**

The division director, assistant division director, operations program support technician, licensing administrators, and licensing representatives shall be responsible for ensuring compliance with this standard operating procedure.

**205-7.0      INTERPRETATION**

The director of the Division of Licensing Programs shall be responsible for interpreting or granting any exceptions to this standard operating procedure.

**205-8.0      SUPERSEDES: SOP-106**

**205-9.0      EFFECTIVE DATE: May 20, 2005**

**205-10.0      REVIEW DATE: Two years from the effective date.**

Reviewed and Approved by:

Carolynne H. Stevens, Director  
Division of Licensing Programs

Date: May 12, 2005

# Allowable Variance Request Form

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Date \_\_\_\_\_



**Section 2 – Licensing office to complete:**

DOLPHIN#: \_\_\_\_\_ Licensing office: \_\_\_\_\_

Effective date of regulation: \_\_\_\_\_ Effective duration of variance: \_\_\_\_\_

Date request received by licensing representative: \_\_\_\_\_

Statement of Standard: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Conflicts with other agency regulations or statutes? \_\_\_\_\_

Recommendation:            Approve ☐            Deny ☐

Explain:

\_\_\_\_\_  
Licensing Representative

\_\_\_\_\_  
Date

\_\_\_\_\_  
Licensing Administrator

\_\_\_\_\_  
Date

**Section 3 – Tracking:**

Date received in central office: \_\_\_\_\_

Date reviewed in central office: \_\_\_\_\_

Status:            Approve ☐                      Deny ☐

Comments (if any):

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Signature of Division Director

-----  
Date

Date notification sent to applicant/licensee: \_\_\_\_\_

Date additional submissions received if denied: \_\_\_\_\_

Date of final decision: \_\_\_\_\_

## Appendix B

### Sample Approval Letter

October 4, 2004

Ms. Jane Doe, Chief Administrative Officer  
Doe Children's Residential Services  
Post Office Box 12345  
Richmond, Virginia 23219

Re: Doe House  
1234 Doe Road  
Richmond, Virginia 23255

Dear Ms. Doe:

The Virginia Department of Social Services (VDSS), Division of Licensing Programs (DOLP) received a completed Allowable Variance Request Information Form for Doe House for the following standard found in the *Standards of Interdepartmental Regulation for Children's Residential Facilities*:

Standard 22 VAC 42-10-380.E.3 relates to the minimum ceiling height for sleeping quarters. This standard requires the following:

E. Sleeping quarters in facilities licensed by the DSS prior to July 1, 1981 and facilities established, constructed or structurally modified after July 1, 1981, except for primitive campsites, shall have:

3. Ceilings at least 7 ½ feet in height.

The intent of this standard is to ensure that children have bedroom space sufficient for sleeping while providing a relaxing, comfortable living environment.

You have requested a variance to the aforementioned standard to allow the use of a bedroom with less than the required space. The licensing specialist has confirmed that Doe House plans for an occupancy of two residents in this 276 square foot (or 106 square feet per person) third floor bedroom area. The bedroom has a "knee wall" or sloped ceiling running the entire width of the house in this finished attic space area. The ceiling measures seven feet in height by six feet across at the tallest portion. Then it gently slopes down over a five-foot-three-inch space to a final ceiling height of four feet five inches where the sloped ceiling meets the

Ms. Jane Doe  
October 4, 2004  
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wall. The bedroom furniture is arranged to maximize the square footage of the room.

The standard requires that bedrooms have square footage equal to or exceeding 60 square feet to accommodate up to four persons. The current square footage and placement of furniture assists to ensure non-crowded conditions and allows ample room in this bedroom.

Based upon the information provided about the third floor bedroom area in Doe House, I do not believe that the care of the children will be adversely affected under the current conditions. Therefore, I will grant an allowable variance to Standard 22 VAC 42-10-380.E.3 effective the date of this letter.

This allowable variance will be reviewed annually and remain in effect as long as there are no changes at your facility that impact our assessment. I reserve the option of rescinding this action at any time if, in the assessment of licensing staff, the allowable variance no longer appears warranted.

If you have any questions regarding my understanding of the issues, or have additional facts which you believe should be considered, please contact Ms. Joni Baldwin, your licensing specialist, at (804) 662-9763 and she will bring your concerns to my attention.

Sincerely,

Carolynne H. Stevens, Director  
Division of Licensing Programs

CHS/jsb

cc: Lynne A. Williams, Assistant Director, Division of Licensing Programs  
William J. Spitzer, Operations Manager, Division of Licensing Programs  
Leslie Knachel, Licensing Administrator, Child Welfare Licensing Unit, DOLP  
Joni Baldwin, Licensing Specialist, Child Welfare Licensing Unit, DOLP  
Charlene Vincent, Coordinator, Office of Interdepartmental Regulation of  
Children's Residential Facilities

## Appendix C

### Sample Denial Letter

October 4, 2004

Mr. John Smith, Owner  
Smith Assisted Living Facility  
1234 Home Drive  
Midlothian, Virginia 23112

Re: Smith Assisted Living Facility  
1234 Work Road  
Midlothian, Virginia 23112

Dear Mr. Smith:

The Virginia Department of Social Services (VDSS), Division of Licensing Programs (DOLP) received a completed Allowable Variance Request Information Form for Smith Assisted Living Facility for the following standard found in the *Standards and Regulations for Licensed Assisted Living Facilities*:

Standard 22 VAC 40-71-540.A.1 relates to the number of toilets on each floor where there are residents' bedrooms. This standard requires the following:

On each floor where there are residents' bedrooms, there shall be:

- a. At least one toilet for each seven persons

The intent of this standard is to meet the sanitary needs of persons who are elderly.

You have requested a variance to the aforementioned standard to increase your capacity of residents from seven to eight without adding another toilet to meet this requirement.

Based upon the information provided and because having at least one toilet for each seven persons is, at best, only marginally adequate to meet the health and comfort needs of persons who are elderly or disabled, I must deny your request for an allowable variance to Standard 22 VAC 40-71-540.A.1.

Mr. John Smith  
October 4, 2004  
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If you have any questions regarding my understanding of the issues, or have additional facts which you believe should be considered, please contact Ms. Tamara Watkins, your licensing inspector, at (804) 662-7422 and she will bring your concerns to my attention.

Sincerely,

Carolynne H. Stevens, Director  
Division of Licensing Programs

CHS/tgw

cc: Lynne A. Williams, Assistant Director, Division of Licensing Programs  
William J. Spitzer, Operations Manager, Division of Licensing Programs  
DeNyce Bonaparte, Licensing Administrator, Central Licensing Office  
Tamara G. Watkins, Licensing Inspector, Central Licensing Office

## **Appendix D**

### **Sample Confirmation Letter**

January 10, 2005

Ms. Jane Doe  
1020 Brook Road  
Richmond, Virginia 23219

Re: Doe Child Day Care Center  
21 First Street  
Richmond, Virginia 23219

Dear Ms. Doe:

The Virginia Department of Social Services (VDSS), Division of Licensing Programs (DOLP) has received your letter dated January 3, 2005 withdrawing a request for an allowable variance to Standard 22 VAC 15-30-471.2.a of the *Minimum Standards for Licensed Child Day Centers* for the Doe Child Day Care Center. This letter confirms the withdrawal of the request.

Sincerely,

Carolynne H. Stevens, Director  
Division of Licensing Programs

CHS/pav

cc: Lynne A. Williams, Assistant Director, Division of Licensing Programs  
William J. Spitzer, Operations Manager, Division of Licensing Programs  
Wayne Johnston, Licensing Administrator, Central Licensing Office  
Deborah Beirne, Licensing Inspector, Central Licensing Office